

International Comparative Legal Guides



Employment & Labour Law 2020

A practical cross-border insight into employment and labour law

10th Edition

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Indonesia

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main source of employment law in Indonesia is Law No. 13 of 2003 on Manpower ("**Labour Law**").

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

In Indonesia, there are three types of workers: fixed-term employees; permanent employees; and foreign employees. They are distinguished according to the length of service, to the nature of the job and to the type of job.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

For permanent employees, the contract can be in writing or oral. However, for fixed-term and foreign employees it has to be in writing or they will automatically become a permanent employee.

1.4 Are any terms implied into contracts of employment?

There are no terms implied into contracts of employment.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

The minimum terms of a contract of employment regulated in employment law are as below:

- The name, address and line of business.
- The name, sex, age and address of the employee.
- The occupation or the type of job.
- The place where the job is to be carried out.
- The amount of wages and how the wages shall be paid.
- The job requirements, stating the rights and obligations of both the entrepreneur and the employee.
- The date the work agreement starts to take effect and the period during which it is effective.
- The place and date where the work agreement is made.
- The signatures of the parties involved in the work agreement.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Labour Law refers to Collective Labour Agreements ("**CLA**"), which are similar to collective bargaining agreements in other jurisdictions. CLAs are a result of negotiation between a registered labour union or several registered labour unions, and the employer or several employers or employer organisations. An employer is not obliged to have a CLA, but at the same time, no provisions in Labour Law prohibit an employer from taking the initiative to propose a negotiation of a CLA. In practice, the initiative to negotiate a CLA typically comes from the labour union(s). It should also be noted that the Labour Law requires an employer to have at least 10 employees in order to have a company regulation ("**CR**"). A company regulation is different to a CLA. A company regulation needs to be ratified by the relevant local office of the Ministry of Manpower and Transmigration ("**MOMT**"), depending on the employer's location. The bargaining for CLA or company regulation usually takes place at company level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

The main source of law refers to Law No. 21 of 2001 on labour unions. A labour union would not be recognised until it is registered with the local office of the MOMT. A labour union has to notify:

- the local office of the MOMT, in writing, for registration purposes; and
- the employer, in writing, after it has registered with the local office of the MOMT, on which the employer has no right to object.

2.2 What rights do trade unions have?

The rights of the trade unions, among others, are:

- To negotiate a collective labour agreement with management.
- To represent employees in industrial dispute settlements.
- To represent workers/labourers in manpower institutions.
- To establish an institution or carry out activities related to efforts to improve employees' welfare.

- e. To carry out other manpower or employment-related activities that do not violate prevailing laws or regulations.

2.3 Are there any rules governing a trade union's right to take industrial action?

The Labour Law recognises the employees' right to take industrial action, i.e., strike, in a case of unsuccessful negotiation. "Unsuccessful negotiation" means the failure to reach an agreement for the settlement of an industrial relations dispute which is caused by the employer's unwillingness to negotiate with the employees (or the labour union) or caused by a deadlock in negotiation. The Labour Law defines a "strike" as an action of the employees that is planned and implemented collectively, and/or by the labour union, to stop or delay work.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Indonesia's Labour Law acknowledges works councils as a Bipartite Cooperation Body ("BCB"). Every company employing more than 50 employees must establish a BCB. A BCB functions as a communications and consultancy forum focusing on manpower matters in the company. The membership of a BCB consists of a representative of the employer and a representative of the employees, appointed democratically by the employees to represent their interests.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

If a company has established a BCB, every employment dispute must go through bipartite negotiation. If such negotiation fails, then one or both parties can submit the dispute to the local manpower office to obtain their recommendation, or one or both parties can submit the dispute to the Industrial Relation Court ("IRC").

2.6 How do the rights of trade unions and works councils interact?

Under the Labour Law and its implementing regulation, there is no clear provision on how labour unions and the BCB should interact. In our experience, if a labour union exists, the BCB is rarely utilised.

2.7 Are employees entitled to representation at board level?

Nothing in the Labour Law and the Labour Union Law gives members of a labour union the right to sit in a company's management or at board level.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

As regulated in the 1945 Indonesian Constitution, Law No. 21

of 1999 and the Labour Law, employees are protected against any discrimination. Every person available for a job shall have the same opportunity to hold a job without discrimination from their employer.

3.2 What types of discrimination are unlawful and in what circumstances?

The following provides the types of discrimination prohibited under the relevant Indonesian regulations:

- According to the elucidation of Article 5 of the Labour Law, discrimination means when an employee does not have the same rights or chances as others with regard to (i) applying for a job, and (ii) obtaining a viable standard of living regardless of his/her gender, ethnicity, race, religion, skin colour or politics. This includes equal treatment for a disabled employee.
- Under Law No. 21 of 1999, discrimination in employment and occupation includes discrimination in the provision of training and skills development based on ethnicity, race, religion, skin colour, politics, nationality or origin.
- Under Government Regulation No. 8 of 1981, employers may not discriminate between the salaries of male and female employees performing work of equal value.
- Under Minister of Manpower Decree No. Kep.68/MEN/IV/2004, employers may not discriminate against employees because they have HIV/AIDS or are believed to be infected with the HIV virus.

3.3 Are there any special rules relating to sexual harassment (such as mandatory training requirements)?

There are no special rules related to sexual harassment within the Labour Law. Sexual harassment is only regulated in the general Criminal Law Code under Article 289.

3.4 Are there any defences to a discrimination claim?

The Labour Law does not provide any specific regulation in relation to the defences to a discrimination claim.

3.5 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

The Labour Law regulates that if an employee gets discriminatory treatment when they are working, then he/she can ask the company to conduct a bipartite negotiation. The sanction of a violation of discrimination rights in the company is administrative sanction.

3.6 What remedies are available to employees in successful discrimination claims?

Available remedies are not specifically addressed in the Labour Law or its implementing regulations.

3.7 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

There is no additional protection for atypical workers in

Indonesia. As far as rights and protection are concerned, the provisions in the employment agreement will play a significant part.

3.8 Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?

There are no specific rules or requirements in the Labour Law or its implementing regulations related to whistleblowing. Many companies that applied a whistleblowing system have only applied it based on their internal company policy or, for foreign-owned companies, it would apply based on their shareholders' requirement.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

The Labour Law regulates that a worker is entitled to one and a half months' (90 days) maternity leave before giving birth and another one and a half months (90 days) after giving birth. This can be extended if the employee receives a letter from an obstetrician stating that they require further leave days. In practice they can take leave after giving birth for three months.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

The worker is entitled to a full salary (basic salary and fixed allowance) and medical reimbursement during maternity leave. Additional benefits may be regulated in the employment agreement, company regulation and/or CLA.

4.3 What rights does a woman have upon her return to work from maternity leave?

A female employee has the right to breastfeed her baby at any time, including during office hours if necessary. CR may regulate further rights for the employee.

4.4 Do fathers have the right to take paternity leave?

Yes, fathers are entitled to two days of paternity leave excluding annual leave.

4.5 Are there any other parental leave rights that employers have to observe?

Yes, other parental leave rights include where employees marry off their children, have their sons circumcised or have their children baptised, and in the event of death of an employee's child.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

There is no entitlement to work flexibly under the Labour Law.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

Employees do not automatically transfer to the buyer in business sales. The employees have the right to be given an option to continue working for the buyer or to have their employment terminated.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

Upon their agreement to continue working for the buyer, all of the employees' applicable rights may or may not be transferred to the buyer. A business sale may give rise to the right of the labour union to negotiate new terms of employment, however the determination of which shall be subject to the existing CLA.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Under the Indonesian Company Law, based on Law No. 40 of 2007, a company has to inform its employees at least 30 days before an acquisition to give them and related parties an opportunity to convey complaints if they think that the sale will disadvantage them. There are no sanctions for failing to do so under the prevailing laws.

5.4 Can employees be dismissed in connection with a business sale?

Yes. If a company dismisses its employees due to a business sale, then it must pay the statutory termination payment.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

No, employers are not free to change the terms and conditions of employment.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

There is no notice of termination in Indonesian law. However, if a company wants to terminate its employees, it has to obtain approval from the IRC, or if they signed a Mutual Termination Agreement, then the Mutual Termination Agreement should be registered with the IRC.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Indonesian law does not recognise garden leave. However, garden leave is similar to the suspension given by the company

during the termination process. During the suspension period, the company is still obligated to pay the employee's salary.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

An employee cannot be terminated unilaterally. A company can only terminate its employees after obtaining approval from the IRC. This is conducted by filing a lawsuit, unless the company and employee can settle the dismissal by signing a Mutual Termination Agreement which would then be registered with the IRC.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

The Labour Law does not provide specific protection for certain employees. However, the Labour Law does prohibit an employer from dismissing an employee for the following reasons:

- a. The employee joins in matrimony.
- b. The employee is absent due to illness for less than 12 months consecutively.
- c. The employee performs a role in a trade union.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so, how is compensation calculated?

1. The employer can initiate the termination of an individual employee for the following reasons:
 - a. a violation of the employment agreement, CR or CLA;
 - b. the employee has been detained by the authorities and, six months later, the employee is still unable to work due to criminal proceedings;
 - c. the employee has been ill for 12 consecutive months, as certified by a doctor;
 - d. the employee has been absent for five days without notifying the employer and has been served proper notice twice;
 - e. the employee has reached retirement age; and
 - f. the demise of the employee.
2. The employer can initiate the termination of employees for the following business-related reasons:
 - a. a change of status, merger, consolidation or acquisition/change of company ownership;
 - b. the employer becoming insolvent;
 - c. the employer having suffered continuous losses for two years consecutively, as proven by its financial reports for the last two years that have been audited by a public accountant; and
 - d. the employer is permanently closing down the business.

There are many different circumstances and events which may lead to termination. Similarly, there are a number of combinations of severance pay, a service period recognition payment and compensation depending on the reason for the termination and the length of service which may apply. Therefore, they must be calculated on a case-by-case basis. However, in general,

permanent employees' severance packages will be calculated based on their years of service, amount of monthly salary (basic salary + fixed allowance (if any)), and the applicable severance package calculation.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

The termination procedures are as below:

- a. The company and employee have to conduct bipartite negotiations within 30 days. Should they reach a settlement, they will sign a Mutual Termination Agreement. If they do not reach any settlement, one of the parties will have to submit a mediation petition to the local office of the MOMT.
- b. The mediation process will take 30 working days. Should they reach a settlement before the mediation, the mediator will issue a recommendation and they will then sign a Mutual Termination Agreement. If they do not reach a settlement, one of the parties will have to file a lawsuit with the IRC.
- c. The IRC will examine the case and issue a decision related to the termination. Please note that the losing party has the right to submit an appeal to the Supreme Court.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

Depending on the legality of his/her termination, and the reason of termination, an employee may request for a bipartite negotiation with the employer. Failing that, the employee may refer the unsuccessful bipartite negotiation to the local office of the MOMT (he/she may either choose to go through mediation, arbitration or conciliation) and ultimately the IRC. For a termination of an indefinite-period employment agreement (permanent employment), the remedies may vary from reinstatement of employment to statutory termination payment, which consists of severance, long-service pay and compensation of rights. As for termination of a fixed-term employment, any party that terminates a definite-period employment agreement before its expiry is obligated to pay to the other party compensation in the amount equal to the definite-period employee's salary up until when the definite-period employment agreement should have expired.

6.8 Can employers settle claims before or after they are initiated?

Yes, the company can settle claims before or after they are initiated at the IRC. The settlement has to be elaborated in a Mutual Termination Agreement.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

The Labour Law does not differentiate an employer's obligations for dismissing a number of employees, whether at the same time or not.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

The procedure for termination remains the same whether it is a mass or individual termination (see question 6.6). If the employee(s) has reasons to believe that the employer has failed to comply with the mandatory requirements, the employee may refer the dispute to the local office of the MOMT and, ultimately, the IRC.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

The Labour Law does not recognise restrictive covenants. However, in practice, they can be agreed between the parties in the Mutual Termination Agreement.

7.2 When are restrictive covenants enforceable and for what period?

If regulated under the Mutual Termination Agreement, restrictive covenants can be enforced by filing a civil lawsuit.

7.3 Do employees have to be provided with financial compensation in return for covenants?

Whether or not employees have to be provided with financial compensation in return for covenants depends on the agreement between the parties.

7.4 How are restrictive covenants enforced?

There is a similar jurisprudence during the Dutch colonial period which categorises this as an unlawful act. Thus, any party may file a civil lawsuit against the party breaching this agreement.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

Data protection is not specifically addressed in the Labour Law. Law No. 11 of 2008 on Electronic Information and Transaction (“EIT Law”) and its implementing regulations remain the main regulation that addresses the use of an individual’s private or personal information through electronic media. In essence, the EIT Law strictly requires the consent of the individual concerned to use their private or personal information through electronic media. Consequently, an employer cannot transfer employee data to other countries without the prior consent of the data owner.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

There are no specific provisions in the Labour Law which address this. However, in general, the necessity to protect the

confidentiality of an individual’s personal data covers all individuals, regardless of whether they are employees, contacts or dependants of the employees, or other individuals somehow related to the entity that will collect, use, process, transfer and disclose their data.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

From a regulatory perspective, in Indonesia, aside from the pre-employment medical check-up, most pre-employment background checks are not specifically regulated. However, in practice, some employers do carry out pre-employment screening on prospective employee candidates.

8.4 Are employers entitled to monitor an employee’s emails, telephone calls or use of an employer’s computer system?

The EIT Law in essence prohibits a breach of privacy of the data owner. However, if an employer’s computer system is used, then it is advisable to regulate this matter in the CR or CLA.

8.5 Can an employer control an employee’s use of social media in or outside the workplace?

Yes, an employer can control an employee’s use of social media if this is regulated in the CR or CLA.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

The IRC hears employment-related complaints. A case will be examined by three judges, one of whom acts as the head of the panel of judges.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

The termination procedures are as below:

The company and employee have to conduct bipartite negotiations within 30 days and, should they reach a settlement, they will then sign a Mutual Termination Agreement. If they do not reach any settlement, then the process is that one of the parties will have to submit a mediation petition to their local manpower office.

The mediation process will take 30 working days; should they reach a settlement before the mediation, the mediator will issue a recommendation and they will then sign a Mutual Termination Agreement. If they do not reach any settlement, then the process is that one of the parties will have to file a lawsuit to the IRC.

The IRC will examine the case and issue a decision related to the termination. Please note that the losing party has the right to submit an appeal to the Supreme Court.

A court fee will not be charged for claims under IDR 150 million. For a claim above IDR 150 million, a court fee will be charged based on the panel’s discretion.

9.3 How long do employment-related complaints typically take to be decided?

By law, the IRC must issue a ruling within 50 working days of the first hearing and another nine months if the parties appeal to the Supreme Court. However, in practice, the case will have a final and binding decision in more than one year.

9.4 Is it possible to appeal against a first instance decision and if so, how long do such appeals usually take?

Yes, it is possible to appeal against a first instance decision. An appeal to the Supreme Court can be submitted against a first ruling (of the IRC) and only for disputes over rights and termination. An appeal in the Supreme Court will take nine months.



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